Koh Huat Kwan v Pegawai Penerima selaku pelikuidasi bagi Poh Mah Housing Development Sdn Bhd & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A-03(IM)-123–10 OF 2014
ZAWAWI SALLEH, VERNON ONG AND ABDUL RAHMAN SEBLI JJCA
16 JUNE 2015

Companies and Corporations — Winding up — Liquidators — Whether liquidator acted properly in disposal of assets of wound up company — Whether sale of company's land should not be set aside simply because there was subsequent offer of a higher bid — Whether land sold at price above prevailing market value and adequate in circumstances — Whether time bar under Limitation Act 1953 could not be invoked against liquidator to set aside sale as sale was carried out pursuant to s 236(2) of the Companies Act 1965 — Whether time under Limitation Act 1953 ceased to run in favour of creditors of company once winding up order was made

As security for credit facilities advanced by the third respondent ('R3'), the second respondent ('R2') deposited with R3 the original title deed to a piece of land that it owned. Six years after R3 obtained judgment against R2 in respect of monies owed under the facilities it lodged a lien-holder's caveat in respect of the land. R2 was wound up by order of court and the first respondent ('R1') was appointed as its receiver/liquidator. Eighteen years after R3 had lodged the lien-holder's caveat it applied for a court order that R1 execute a memorandum of transfer to transfer the land to a prospective buyer. A consent order was recorded under which R1 was to execute the transfer if the sale price of the land was not below the prevailing market value of the land. The fourth respondent ('R4') agreed to buy the land for RM1.2m (the valuation department had valued the land at RM1m) and it signed a sale and purchase agreement with R3. Pursuant to the consent order, R1 executed the memorandum of transfer in favour of R4. The appellant lodged a private caveat to prevent the transfer from taking place but when the same was removed by the High Court on R3's application, he applied to intervene in the winding up proceedings to set aside the consent order pursuant to ss 236(3) and 279 of the Companies Act 1965 ('the Act'). Dismissing the application to set aside the consent order, the High Court held, inter alia, that (a) there was nothing to show R1 had acted fraudulently or not exercised his discretion bona fide or that he had done, or was proposing to do, something utterly unreasonable and absurd; (b) the subsequent offer of a higher bid in respect of the land could not be a ground for setting aside the sale of the land as the price agreed for the sale was adequate; (c) the lien-holder's caveat was valid until it was either withdrawn by R3 or

cancelled by the registrar of land titles or by the court; and (d) the plea that limitation had set in as against R1 was untenable as time did not run against R1 where the disposal of the assets of R2 in liquidation was concerned. In the instant appeal against the High Court's decision, the appellant contended, inter alia, that (a) the lien-holder's caveat was unenforceable for being time barred under s 21(1) of the Limitation Act 1953 as more than 12 years had expired from the time R3's right to receive monies secured by a charge had accrued; (b) R1 had no basis to enter into the consent order and he should have enquired into whether the lien-holder's caveat was valid and enforceable; and (c) as R1 did not object to the appellant's application, the High Court should not have dismissed it.

Held, dismissing the appeal with costs:

(1) The plea of limitation affecting the enforceability of the lien-holder's caveat was without merit. The disposal of the land was not a recovery process by a creditor but a disposal of the assets of R2 by a liquidator under s 236(2) of the Act. On the facts of the case, limitation did not apply. The commencement of liquidation stopped time running in favour of the creditors of a company (see paras 19 & 21).

(2) The argument that the High Court failed to determine whether R3 was enforcing its claim as a secured or unsecured creditor was irrelevant and had no bearing on the exercise of R1's power qua liquidator or on the validity of the sale of the land. The appellant's real complaint was directed not at the sale of the land per se; his contention was that there was a buyer with a higher price. As the sale of the land exceeded the minimum price agreed upon by the parties, it could not be said to be inadequate. Accordingly, the subsequent offer of a higher bid should not be a ground to set aside the sale as the price was, in the circumstances, adequate (see para 22).

(3) R1's conduct in disposing of the land was not unusual. There was no evidence to support the appellant's complaint that R1 had acted fraudulently or not bona fide. There was also no merit in the complaint that R1's conduct was so utterly unreasonable and absurd that no reasonable person would have acted as he did (see para 24).

[Bahasa Malaysia summary

Sebagai sekuriti untuk kemudahan kredit yang diberikan oleh responden ketiga ('R3'), responden kedua ('R2') mendeposit dengan R3 surat ikatan hak milik asal kepada sebidang tanah yang dimilikinya. Enam tahun selepas R3 memperolehi penghakiman terhadap R2 berkaitan wang yang terhutang di bawah kemudahan tersebut ia memasukkan kaveat pemegang lien berkaitan tanah tersebut. R2 digulung atas perintah mahkamah dan responden pertama ('R1') dilantik sebagai penerima/likuidatornya. Lapan belas tahun selepas R3

telah memasukkan kaveat pemegang lien ia memohon untuk perintah mahkamah bahawa R1 melaksanakan memorandum pemindahan untuk memindahkan tanah kepada pembeli prospektif. Perintah izin adalah direkodkan di bawah mana R1 mesti melaksanakan pemindahan jika harga jualan tanah bukan di bawah nilai pasaran semasa tanah tersebut. Responden keempat ('R4') bersetuju untuk membeli tanah tersebut untuk harga sejumlah RM1.2 juta (jabatan penilaian telah menilaikan tanah tersebut pada RM1 juta) dan ia menandatangani perjanjian jual beli dengan R3. Berikutan perintah izin, R1 melaksanakan memorandum pemindahan memihak R4. Perayu memasukkan kaveat persendirian untuk menghalang daripada berlakunya pemindahan tetapi apabila ianya ditolak oleh Mahkamah Tinggi atas permohonan R3, dia memohon untuk campur tangan dalam prosiding penggulungan untuk mengetepikan perintah izin berikutan ss 236(3) dan 279 Akta Syarikat 1965. Menolak permohonan untuk mengetepikan perintah izin, Mahkamah Tinggi memutuskan, antara lain, bahawa (a) tidak terdapat apa-apa untuk menunjukkan R1 telah bertindak secara fraud atau tidak menjalankan budi bicaranya secara bona fide atau dia telah lakukan, atau mencadangkan untuk melakukannya, sesuatu yang sama sekali tidak munasabah dan tidak masuk akal; (b) tawaran kemudian perbidaan yang lebih tinggi berkaitan tanah tersebut tidak boleh menjadi alasan untuk mengetepikan jualan tanah tersebut kerana harga yang dipersetujui untuk jualan adalah wajar; (c) kaveat pemegang lien adalah sah sehingga ia sama ada ditarik balik oleh R3 atau dibatalkan oleh Pendaftar Hak milik Tanah atau oleh mahkamah; dan (d) pli bahawa had masa telah bermula terhadap R1 tidak dapat dipertahankan kerana masa tidak berjalan terhadap R1 di mana berkenaan perlepasan aset R2 dalam likuidasi. Dalam rayuan ini terhadap keputusan Mahkamah Tinggi, perayu berhujah, antara lain, bahawa (a) kaveat pemegang lien adalah tidak dapat dikuatkuasakan kerana dihalang masa di bawah s 21(1) Akta Had Masa 1953 kerana lebih daripada 12 tahun telah tamat tempoh dari masa hak R3 untuk menerima wang yang dijamin oleh caj telah terakru; (b) R1 tidak mempunyai asas untuk memasukkan ke dalam perintah izin dan dia patut bertanya sama ada kaveat pemegang lien adalah sah dan boleh dikuat kuasa, dan (c) memandangkan R1 tidak membantah permohonan perayu, Mahkamah Tinggi tidak patut menolaknya.

Diputuskan, menolak rayuan dengan kos:

(1) Pli had masa menjejaskan penguatkuasaan kaveat pemegang lien adalah tanpa merit. Perlepasan tanah tersebut bukan proses pemulihan oleh pemiutang tetapi perlepasan aset R2 oleh likuidator di bawah s 236(2) Akta. Atas fakta kes, had masa tidak terpakai. Permulaan likuidasi masa berhenti berjalan berpihak kepada pemiutang syarikat (lihat perenggan 19 & 21).

(2) Hujahan bahawa Mahkamah Tinggi gagal untuk menentukan sama ada R3 menguatkuasakan tuntutannya sebagai pemiutang bercagar atau

tidak bercagar adalah tidak relevan dan tidak mempunyai kaitan ke atas perlaksanaan kuasa R1 sebagai likuidator atau atas kesahan jualan tanah tersebut. Aduan sebenar perayu adalah diarahkan bukan pada jualan tanah tersebut itu sendiri; hujahannya adalah bahawa terdapat pembeli dengan harga lebih tinggi. Memandangkan jualan tanah tersebut melebihi harga minima yang dipersetujui oleh pihak-pihak, ia tidak dapat dikatakan sebagai tidak wajar. Oleh itu, tawaran berikutnya perbidaan yang lebih tinggi tidak patut menjadi alasan untuk mengetepikan jualan kerana harga adalah, dalam keadaan, wajar (lihat perenggan 22).

(3) Tingkah laku R1 dalam melepaskan tanah tersebut bukan luar biasa. Tidak terdapat keterangan untuk menyokong aduan perayu bahawa R1 telah bertindak secara fraud atau bukan bona fide. Juga tidak terdapat merit dalam aduan bahawa tingkah laku R1 adalah sama sekali tidak munasabah dan tidak masuk akal bahawa tiada orang yang munasabah akan bertindak seperti yang dilakukannya (lihat perenggan 24).]]]]]]]

Notes

For cases on liquidators, see 3(1) *Mallal's Digest* (5th Ed, 2015) paras 1557–1618.

Cases referred to

A Debtor (No 400 of 1940), Re; Ex parte The Debtor v Dodwell (The Trustee) [1949] 1 All ER 510, Ch D (refd)

Abric Project Management Sdn Bhd v Palmshine Palza Sdn Bhd & Anor [2007] 3 MLJ 571, HC (refd)

American International Assurance Bhd v Coordinated Services L Design Sdn Bhd [2012] 1 MLJ 369; [2012] 1 CLJ 506, CA (refd)

Cases of Taff Wells Ltd, Re [1992] BCLC 11, Ch D (refd)

Director of Customs, Federal Territory v Ler Cheng Chye (liquidator of Castwell Sdn Bhd, in liquidation) [1995] 2 MLJ 600; [1995] 3 CLJ 316, SC (refd)

Dr KS Thangal v State of Kerala And Ors AIR 1968 Ker 197, HC (refd)

General Rolling Stock Company, In re, Joint Stock Discount Company's Claim (1872) LR 7 Ch App 646, CA (refd)

Harold M Pitman & Co v Top Business Systems (Nottingham) Ltd [1984] BCLC 593, Ch D (refd)

In The Matter of Taj Clay Works Ltd v Official Liquidator AIR 1960 AP 429, HC (refd)

Khaw Poh Chhuan v Ng Gaik Peng & Ors [1996] 1 MLJ 761, FC (refd)

Leon v York-O-Matic Ltd and Others [1966] 3 All ER 277, Ch D (refd)

Mahadevan & Anor v Manilal & Sons (M) Sdn Bhd [1984] 1 MLJ 266; [1984] 1 CLJ 286; [1984] 1 CLJ Rep 230, FC (refd)

Manilal & Sons (M) Sdn Bhd v Mahadevan & Anor [1986] 1 MLJ 357; [1986] 2 CLJ 2; [1986] CLJ Rep 26, PC (refd)

A *Mercantile Bank Ltd v The Official Assignee of the property of How Han Teh* [1969] 2 MLJ 196 (refd)
Overmark Smith Warden Ltd, Re [1982] 3 All ER 513, Ch D (refd)
Paramoo v Zeno Ltd [1968] 2 MLJ 230, FC (refd)
Perwira Affin Bank Bhd (formerly known as Perwira Habib Bank Malaysia Bhd) v Selangor Properties Sdn Bhd & Ors [2010] 3 MLJ 43; [2010] 3 CLJ 45, CA (refd)
B *Wong Yew Kwan v Wong Yu Ke & Anor* [2009] 2 MLJ 672; [2010] 2 CLJ 703, CA (refd)

C **Legislation referred to**

Companies Act 1965 ss 236(2), (2)(c), (3), 263(3), 279
Limitation Act 1953 s 21(1)
National Land Code ss 281(2), 331, Form 14A

D

Appeal from: Winding Up Petition No 28–38 of 1998 (High Court, Ipoh)

Raj Shankar (Raj Shankar) for the appellant.
Rosli bin Ahmad (Senior Federal Counsel, Malaysia Department of Insolvency) for the first and second respondents.
E *SP Muthu Veloo (SP Veloo & Co) for the third respondent.*
Rathimalar (Rathi MG Assoc) for the fourth respondent.

Vernon Ong JCA:

F INTRODUCTION

[1] This is an appeal by the appellant, Koh Huat Kwan, against the decision of the learned High Court judge dismissing the appellant's application to set aside a consent order dated 26 June 2013 ('the consent order') entered into between Affin Bank Bhd ('the third respondent') and the official receiver ('the first respondent') acting as the liquidator of Poh Mah Housing Development Sdn Bhd ('the second respondent').
G

H **[2]** Pursuant to the grant of financing facilities by the third respondent to the second respondent, the second respondent deposited the original document of title to a piece of land held under GM5A, Lot No 2859, Mukim Durian Sebatang, Tempat Ulu Sungai Serasid, Daerah Hilir Perak, Negeri Perak ('the land') with the third respondent.

I

[3] On 6 December 1989, the third respondent obtained judgment against the second respondent for RM1,575,984.41.

[4] On 12 July 1995, the third respondent lodged a lien-holder's caveat over the land.

[5] The second respondent was wound up pursuant to an order dated 26 May 1999 and the official receiver was appointed as the liquidator.

[6] On 29 April 2013, the third respondent filed an application ('the first application') for an order that one Daleep Singh of Rimbun Capital Sdn Bhd be appointed in place of the first respondent.

[7] On 20 June 2013, the third respondent filed another application to amend the first application by adding an alternative prayer whereby the first respondent has to execute the transfer form in favour of the prospective buyer of the land.

[8] On 26 June 2013, the consent order was recorded in terms of the alternative prayer whereby it was agreed that the first respondent will execute the transfer form in Form 14A in favour of the prospective buyer of the land provided that the sale price of the land shall not be less than the prevailing market value of the land as valued by the Jabatan Perkhidmatan dan Penilaian Harta ('JPPH').

[9] On 10 July 2013, the JPPH issued a valuation report stating that the market value of the land as at 8 July 2013 is RM1m ('the JPPH valuation report').

[10] On 27 November 2013, the third respondent and the fourth respondent entered into a sale and purchase agreement ('the SPA') under which the third respondent agreed to sell and the fourth respondent agreed to buy the land for RM1.2m; pursuant to the consent order the first respondent executed the transfer form in favour of the fourth respondent.

[11] On 13 December 2013, the appellant lodged a private caveat against the land. The private caveat was ordered to be removed by the High Court on 3 June 2014 on the application of the third respondent.

[12] On 30 May 2014, the appellant filed an application for leave to intervene in the proceedings and to set aside the consent order.

DECISION OF THE HIGH COURT

[13] The findings of the learned High Court judge may be summarised as follows:

(a) it is not necessary to file a fresh action to set aside the consent order as the challenge is against the decision of the first respondent in agreeing to sign the transfer form as the appellant's application to challenge the exercise of the first respondent's powers is made under ss 236(3) and 279 of the Companies Act 1965 ('the CA 1965');

(b) the third respondent was entitled to register the lien-holder's caveat after judgment was taken on the loan (see *Mercantile Bank Ltd v The Official Assignee of the property of How Han Teh* [1969] 2 MLJ 196). The lien-holder's caveat remains valid until withdrawn by the third respondent or cancelled by the registrar or by court;

(c) the plea of limitation is not relevant as against the first respondent. Time does not run against the first respondent where the disposal of the assets of the company in liquidation is concerned;

(d) it has not been shown that the first respondent had acted fraudulently, or had in some way not exercised his discretion bona fide, or that the first respondent has done and/or is proposing to do something which was so utterly unreasonable and absurd that no reasonable person would do it (s 236(2)(c) of the CA 1965); and

(e) even though the sale by the first respondent is subject to confirmation by the court, the subsequent offer of a higher bid should not be a ground for refusing confirmation of the sale provided the price is adequate (see *Dr KS Thangal v State of Kerala And Ors* AIR 1968 Ker 197 at p 198 and *In The Matter of Taj Clay Works Ltd v Official Liquidator* AIR 1960 AP 429).

THE APPELLANT'S SUBMISSION

[14] Before us, learned counsel for the appellant submitted on the following grounds:

(a) the lien-holder's caveat is unenforceable as it is time barred under s 21(1) of the Limitation Act 1953 ('the LA 1953'). The words 'other charge on land' in s 21(1) of the LA 1953 refers to other encumbrances such as an equitable charge or lien, statutory or equitable which arises as a result of depositing a title deed with the lender (see *Manilal & Sons (M) Sdn Bhd v Mahadevan & Anor* [1986] 1 MLJ 357; [1986] 2 CLJ 2; [1986] CLJ Rep 26 (PC) and *Mahadevan & Anor v Manilal & Sons (M) Sdn Bhd* [1984] 1 MLJ 266; [1984] 1 CLJ 286; [1984] 1 CLJ Rep 230 (FC)). Section 21(1) of the LA 1953 provides that no claim to recover monies secured by a charge can be brought after the expiration of 12 years from the date the right to receive the money accrued. It was contended that since the right to receive the money accrued from the date of the judgment which fell on 6 December 1989, the cause of action abated on

5 December 2011 (see s 281(2) of the National Land Code and *Perwira Affin Bank Bhd (formerly known as Perwira Habib Bank Malaysia Bhd) v Selangor Properties Sdn Bhd & Ors* [2010] 3 MLJ 43 at p 52; [2010] 3 CLJ 45 at p 57 (CA));

(b) the first respondent is only a rubber stamp as it is not a party to the SPA. The first respondent had relinquished his powers as the liquidator under s 236(2) of the CA 1965. The first respondent had no basis to enter into the consent order. He has a duty to determine if the third respondent's claim under the lien-holder's caveat is valid and enforceable. If so, the third respondent should apply for an order for sale. If not, the first respondent should have challenged the validity of the lien-holder's caveat. The sale of the land is wrong and should be set aside and the land reverted back to the first respondent;

(c) the first respondent's decision in refusing to sign the SPA but agreeing to sign the transfer form is perverse. At the High Court, learned counsel for the first respondent was correct in not resisting the appellant's application and leaving the matter to the court's discretion. As such, there was no reason for the High Court judge to dismiss the appellant's application; and

(d) the learned High Court judge failed to determine whether the third respondent was seeking to enforce its claim as a secured or unsecured creditor. The third respondent has never filed a proof of debt with the first respondent. Therefore, the third respondent had at all material times conducted itself as a secured creditor (*Director of Customs, Federal Territory v Ler Cheng Chye (liquidator of Castwell Sdn Bhd, in liquidation)* [1995] 2 MLJ 600 at p 611; [1995] 3 CLJ 316 at p 326).

DECISION

[15] At the outset, it is pertinent to note that the appellant's application to set aside the consent order is predicated on ss 263(3) and/or 279 of the CA 1965 which are as follows:

Section 236(3) reads:

> The exercise by the liquidator of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

Section 279 further provides as follows:

> Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm reverse or modify the act or decision complained of and make such order as it thinks fit.

[16] We agree with the learned High Court judge's observation that the reference to the word 'Court' would mean the 'Winding Up Court' and any application arising out of any matter in the course of a winding up should be referred to the winding up court.

[17] By invoking either of the aforesaid sections of the CA 1965, the winding up court is only justified in interfering with the exercise of the powers, acts or decisions of the first respondent qua liquidator if the appellant can show that the conduct of the first respondent falls within the following categories:

(a) that the first respondent had acted fraudulently; or

(b) that the first respondent was not bona fide in his conduct; or

(c) that the conduct of the first respondent was so utterly unreasonable and absurd that no reasonable person would so act.

(See *Leon v York-O-Matic Ltd and Others* [1966] 3 All ER 277; *Harold M Pitman & Co v Top Business Systems (Nottingham) Ltd* [1984] BCLC 593 and *Abric Project Management Sdn Bhd v Palmshine Palza Sdn Bhd & Anor* [2007] 3 MLJ 571).

[18] On the first issue relating to the unenforceability of the lien-holder's caveat, we agree with the learned High Court judge's finding that the lien-holder's caveat remains valid as it has not been removed or withdrawn (see *Halsbury Laws of England*, Vol 28 (4th Ed, Reissue) at p 352; *Khaw Poh Chhuan v Ng Gaik Peng & Ors* [1996] 1 MLJ 761 (FC); *Wong Yew Kwan v Wong Yu Ke & Anor* [2009] 2 MLJ 672; [2010] 2 CLJ 703; s 331 of the National Land Code and *Paramoo v Zeno Ltd* [1968] 2 MLJ 230 (FC)).

[19] In this connection, the plea of limitation affecting the enforceability of the lien-holder's caveat is also without merit. The disposal of the land is not a recovery process by a creditor. On the facts of this case limitation does not apply as the disposal of land is in essence a disposal of the assets of the second respondent company in liquidation by a liquidator. This is as provided under s 236(2) of the CA 1965 which reads as follows:

(2) The liquidator may –

...

...

(c) sell the immovable and movable property and things in action of the company by public auction, public tender or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels;

[20] As for the second and third issues, the recital to the SPA clearly sets out the background. Recital (1) expressly declares that that the second respondent

is the registered owner of the land and recital (2) states that the first respondent has been appointed as the liquidator of the second respondent under a winding up order made against the second respondent. It is also declared in recital (3) that the land is subject to a lien-holder's caveat in favour of the third respondent and further in recital (4) that by the consent order the first respondent has consented to execute the transfer form in favour of any party identified as the purchaser of the land. It is further declared in recital (5) that the third respondent had obtained the first respondent's prior consent to sign the SPA. We pause to add that the sale price of the land of RM1.2m was not less than the prevailing market value of the land which was valued at RM1m by JPPH. As such, the appellant's argument that the first respondent is only a rubber stamp is unsubstantiated and without merit.

[21] In all the circumstances of this case, we agree with the learned High Court judge that the sale of the land is a disposal of the assets of a company in liquidation. The principle that time stops to run when a company is in liquidation is quite settled. The commencement of a liquidation stops time running in favour of the creditors of a company. In other words, time under the LA 1953 ceases to run against a creditor on a winding up order being made (see *Halsbury's Laws of England*, Vol 7(3) (4th Ed) at p 1730; *In re General Rolling Stock Company, Joint Stock Discount Company's Claim* (1872) LR 7 Ch App 646 at pp 648–650; *Re Cases of Taff Wells Ltd* [1992] BCLC 11 and *Re Overmark Smith Warden Ltd* [1982] 3 All ER 513).

[22] The fourth and last issue relates to the argument that the learned High Court judge failed to determine whether the third respondent was enforcing its claim as a secured or unsecured creditor. We do not think that this is a relevant issue for the simple reason that whether the third respondent is a secured or unsecured creditor has no bearing on the exercise of the power by the first respondent qua liquidator. We agree with the submission of learned counsel for the third respondent that if the third respondent is a secured creditor, then the proceeds of the sale of the land would go towards discharging the property from the secured creditor ie it will be paid to the third respondent. If the third respondent is an unsecured creditor, the proceeds will go to the first respondent qua liquidator. In essence, there is no bearing on the validity of the sale of the land. At any rate, we observe that the appellant's real complaint is directed not at the sale of the land per se; his contention is that there was a buyer with a higher price. The sale of the land having exceeded the minimum price agreed upon by the parties, thus it could not be said to be inadequate. Accordingly, the subsequent offer of a higher bid should not be a ground for setting aside the sale as the price is in the circumstances adequate.

[23] We also note that the learned High Court judge had addressed the point where he opined that if at all the first respondent and the third respondent had

been negligent to have sold the land at RM1.2m, it is for the appellant to bring the relevant action for damages for negligence and not to set aside the sale by the first respondent.

[24] In concluding, we agree with the finding of the learned High Court judge that the conduct of the first respondent in disposing of the land was nothing unusual. There is no evidence to support the appellant's complaint that the first respondent had acted fraudulently or that the first respondent's conduct was not bona fide in all the circumstances. Further, we find no merit in the complaint that the conduct of the first respondent was so utterly unreasonable and absurd that no reasonable person would so act (see *American International Assurance Bhd v Coordinated Services L Design Sdn Bhd* [2012] 1 MLJ 369; [2012] 1 CLJ 506 (CA); *Abric Project Management Sdn Bhd v Palmshine Palza Sdn Bhd & Anor*; *Leon v York-O-Matic Ltd and Others*; *Re A Debtor (No 400 of 1940); Ex parte The Debtor v Dodwell (The Trustee)* [1949] 1 All ER 510 and *Harold M Pitman & Co v Top Business Systems (Nottingham) Ltd*).

[25] For the foregoing reasons, the appeal is dismissed with costs.

Appeal dismissed with costs.

Reported by Ashok Kumar